

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

CASE NO.: 0:22-cv-62268-BB

JESSE IWUJI MOTORSPORTS, LLC,

Plaintiff,

v.

EQUITY PRIME MORTGAGE, LLC,

Defendant.

**JOINT SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION PURSUANT  
TO FED. R. CIV. P. 12(h)(3)**

The Plaintiff/Counter-Defendant, JESSE IWUJI MOTORSPORTS, LLC, and the Defendant/Counter-Plaintiff, EQUITY PRIME MORTGAGE, LLC, by and through undersigned counsel, hereby file this Suggestion of Lack of Subject Matter Jurisdiction, and state:

1. This present action was filed on December 5, 2022.
2. This cause is set for trial during the docket commencing July 1, 2024.
3. In the Plaintiff's Second Amended Complaint, JESSE IWUJI MOTORSPORTS, LLC ("JIM"), listed its members as follows:

- 1) Emmitt James Smith II, a citizen of the State of Texas;
- 2) Michael P. Antonucci, a citizen of the State of Florida;
- 3) Mariana Holdings LLC, a Wyoming entity, whose members are:
  - a) Matthew Casto, a citizen of the State of Michigan; and
  - b) Jesse Iwuji, a citizen of the state of Texas.

[D.E. 7 at ¶ 3].

4. The Plaintiff further alleged that the Defendant's only known member, Eduardo G. Perez, Jr., is a citizen of the State of Georgia. *Id.*

5. In its counterclaim filed on February 9, 2023, the Defendant/Counter-Plaintiff, EQUITY PRIME MORTGAGE, LLC ("EPM"), alleged that "there is complete diversity of citizenship between the parties." [D.E. 10 at ¶ 1].

6. On May 6, 2024, the parties filed a Pretrial Stipulation. [D.E. 50].

7. In Section II, EPM disclosed that at this time "Defendant's members are citizens of Georgia, **Florida**, New Jersey and Rhode Island." *Id.* (emphasis supplied).

8. This action was filed under 28 U.S.C. §1132(c), under this Court's ability to adjudicate matters of state law where there is a diversity of citizenship between the parties. Plaintiff and Defendant are limited liability corporations, organized under the laws of the state of Florida (Plaintiff) and Georgia (Defendant). For purposes of determining whether the Court may assert subject matter jurisdiction in a diversity proceeding, "a limited liability company is a citizen of any state of which a member of the company is a citizen." *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004). Further, "a party's citizenship for diversity purposes is determined at the time suit is filed, without regard to later changes in citizenship." *Orchid Quay, LLC v. Suncor Bristol Bay, LLC*, 178 F. Supp. 3d 1300, 1306 (S.D. Fla. 2016).

9. On May 16, 2024, when it was discovered that both JIM and EPM have a member who is a citizen of Florida, counsel for JIM immediately contacted counsel for EPM to advise of their concerns that this Court *may* lack subject matter jurisdiction over this cause given the lack of complete diversity between the members of two limited liability companies.

10. Counsel for the parties had phone calls and exchanged emails to try and determine the issue of diversity of citizenship.

11. Research was conducted as to Georgia law pertaining to what constitutes membership in a limited liability company.

12. On May 23, 2024, counsel for EPM, in response to a request from counsel for JIM, provided copies of a 2022 K-1 and Membership Interest Assignment Agreement dated October 13, 2022.

13. The documents produced confirm that since October 13, 2022, EPM's members consisted of Eduardo G. Perez, Jr. (Georgia) and Philip Mancuso (Florida).

14. Accordingly, pursuant to Fed. R. Civ. P. 12(h)(3) the parties respectfully suggest to this Court lacks subject matter jurisdiction because when this action was filed there was not a complete diversity of citizenship between the members of the two limited liability companies.

15. Further, counsel for the Plaintiff/Counter-Defendant has coordinated Mediation with Magistrate Judge Alicia O. Valle's Chambers as required by paperless Order [D.E. 63].

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2024, a true and correct copy of the foregoing was electronically filed using CM/ECF.